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FILED

DISTRICT COURT OF GUAM

OCT 21 2005 *MP*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
NORMAN HON SUEN CHAN,)
)
Defendant.)
_____)

CRIMINAL CASE NO. 05-00036

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, NORMAN HON SUEN CHAN, enter into the following plea agreement:

1. The defendant agrees to plead guilty to Count II a Superseding Indictment charging him with Alien Smuggling, in violation of Title 8, United States Code, §§ 1324(a)(2)(B)(ii). The United States will move to dismiss Count I at sentencing.

2(a) The defendant, NORMAN HON SUEN CHAN, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of alien smuggling and other related offenses. Cooperation shall include providing all information known to defendant regarding any criminal activity, including but not limited to the offense to which he is pleading guilty. Cooperation will also include complying with all reasonable instructions from

1 the United States; submitting to interviews by investigators and attorneys at such reasonable
2 times and places to be determined by counsel for the United States; producing to the United
3 States all non-privileged documents (including claimed personal documents) and other materials
4 in the possession, custody or control of defendant requested by attorneys and agents of the United
5 States; and testifying fully and truthfully before any grand juries, hearings, trials or any other
6 proceedings where defendant's testimony is deemed by the United States to be relevant.

7 Defendant understands that such cooperation shall be provided to any state, territorial, local or
8 federal law enforcement agencies designated by counsel for the United States. Further, it is
9 understood and agreed that defendant shall not directly, indirectly, or intentionally disclose
10 anything defendant knows or had done concerning the United States' investigation to anyone
11 other than defendant's attorney. Defendant agrees to take no steps directly or indirectly to warn
12 any subject of this investigation that defendant, a subject or anyone else is being investigated.

13 2(b) The United States will make this cooperation known to the Court prior to the
14 defendant's sentencing. The defendant further understands that he remains liable and subject to
15 prosecution for any criminal schemes of which he does not fully advise the United States, or for
16 any material omissions in this regard.

17 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
18 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
19 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
20 success of any prosecution.

21 2(d) Except as otherwise herein provided, and in particular in Paragraph 10, the United
22 States agrees not to prosecute defendant for any other non-violent offenses which were
23 committed in the District of Guam or the Northern Mariana Islands (CNMI) which defendant
24 reveals to Federal authorities during his cooperation with the United States. This agreement is
25 limited to crimes committed by defendant in the districts of Guam or the CNMI..

26 3. The defendant, NORMAN HON SUEN CHAN, further agrees to submit to a
27 polygraph examination by any qualified Federal polygraph examiner. The defendant understands
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1 that such polygraph examinations may include, but will not be limited to, his knowledge of or
2 involvement in alien smuggling activities and his knowledge of other persons' involvement in
3 such activities. Defendant understands that the government will rely on the polygraph in
4 assessing whether he has been fully truthful.

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6 4. The defendant, NORMAN HON SUEN CHAN, understands that the maximum
7 sentence for Alien Smuggling for commercial advantage or private financial gain is a term of ten
8 (10) years incarceration, with a mandatory minimum term of three (3) years incarceration, a
9 \$250,000 fine, and a \$100 special assessment fee, which must be paid at the time of sentencing.
10 Any sentence imposed may include a term of not more than three (3) years supervised release in
11 addition to such terms of imprisonment. Defendant understands that if he violates a condition of
12 supervised release at any time prior to the expiration of such term, the court may revoke the term
13 of supervised release and sentence him up to an additional two (2) years of incarceration pursuant
14 to 18 U.S.C. § 3583(e)(3).

15 4(b) If defendant cooperates as set forth in Paragraphs 2 and 3, the government will
16 recommend that defendant receive the statutory minimum, or the minimum term of incarceration
17 recommended by the Sentencing Guidelines, whichever is greater.

18 4(c) If the United States believes the defendant has provided "substantial assistance" as
19 defined by Sentencing Guidelines 5K1.1, the United States will request the court to depart below
20 the applicable guidelines range, when fixing a sentence for defendant or may, within one year
21 after sentencing herein, move the Court to order relief pursuant to Rule 35, Rules of Criminal
22 Procedure to whatever guidelines range or sentence of incarceration the United States in its sole
23 discretion deems appropriate. Defendant acknowledges that the United States has made no
24 promise, implied or otherwise, that defendant will be granted a departure for substantial
25 assistance. Defendant further acknowledges that no promise of any kind has been made that a
26 motion requesting such departure will be made except as otherwise provided herein.

27 The United States agrees to consider the totality of the circumstances, including but not
28 limited to the following factors, in determining whether, in the assessment of the U. S. Attorney,

1 defendant has provided substantial assistance which would merit a government request for a
2 downward departure from the mandatory statutory minimum or the applicable Guidelines
3 sentencing range:

4 (1) the United States' evaluation of the significance and usefulness of any assis-
5 tance rendered by defendant;

6 (2) the truthfulness, completeness, and reliability of any information or testimony
7 provided by defendant;

8 (3) the nature and extent of defendant's assistance;

9 (4) any injuries suffered or any danger or risk of injury to defendant or defendant's
10 family resulting from any assistance provided by defendant; and

11 (5) the timeliness of any assistance provided by defendant.

12 It is understood that even if a motion for departure is made by the United States, based
13 upon defendant's perceived substantial assistance, the final decision as to how much, if any,
14 reduction in sentence is warranted because of that assistance, rests solely with the District Court.

15 4(d) The government will recommend a fine within the Sentencing Guidelines range. If
16 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
17 full disclosure of his financial status to the United States Attorney's Office by completing a
18 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
19 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

20 5. The defendant understands that to establish a violation of Alien Smuggling for
21 commercial advantage or private financial gain, as charged pursuant to 8 U.S.C. §
22 1324(a)(2)(B)(ii), the government must prove each of the following elements beyond a
23 reasonable doubt:

24 First: the defendant brought or attempted to bring a person who was an
25 alien into the United States at a designated port of entry;

26 Second: the defendant knew the person was an alien;

27 Third: the defendant knew or was in reckless disregard of the fact that the
28 alien had not received prior official authorization to come to, enter or reside
in the United States; and

Fourth: the defendant committed this offense for the purpose of commercial advantage or private financial gain.

6. The defendant agrees that the Sentencing Guidelines apply to this offense. The defendant also understands that the facts he stipulates to herein will be used, pursuant to 1B1.2, in calculating the applicable guidelines level. The Government and the defendant stipulate to the following facts for purposes of the Sentencing Guidelines:

(a) The defendant was born in 1943, and is a citizen of Canada.

(b) If the defendant cooperates with the United States by providing information concerning the unlawful activities of others, the government agrees that any self-incriminating information so provided will not be used against defendant in assessing his punishment, and therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used in determining the applicable guidelines range.

(c) Win Ling Ren is a citizen of the People's Republic of China. Although not known to defendant at the time, in 2004, Ren and her family agreed to pay an alien smuggling ring in China to bring her to the United States. Ryan Tsang was offered \$2,000 by the ring to escort Ren from China to New York. The smugglers provided Ren with a false Portuguese passport bearing her photograph and biographical data. The scheme was that Ren would fly into Saipan using her legal Chinese passport, then switch to the Portuguese passport for entry into the United States. On September 1, 2004, acting at the request of Koon Wai Leung, defendant applied to the Saipan Director of Immigration for a Visitor's Entry Permit, which would allow Ren to enter Saipan. He attached a copy of her Chinese passport to the application. The permit was issued September 3, and defendant mailed it to Leung, who was in China. The permit authorized Ren to board a flight in China and enter Saipan. Ren and Tsang arrived in Saipan September 11, 2004, and stayed at the Saipan Grand Hotel, where defendant had reserved a room for Ren and a man named Koon Wei Lung. On September 12, Wei Cai, a member of the smuggling ring, flew into Saipan and met with Ren, Tsang and the defendant. They discussed the fact that Ren would be traveling to the United States, and Cai showed the defendant Ren's false Portuguese passport.

1 Defendant drove Cai, Tsang, and Ren to the World Tour Travel Agency, where Cai purchased
2 tickets for Ren to fly Saipan-Guam-Honolulu. Cai attempted to reserve a hotel in Honolulu for
3 Ren, but did not have a credit card. Defendant secured a friend in Saipan, Jack Manglona, to
4 book a room for Ren in Honolulu. Later, defendant drove Tsang and Ren to the Saipan airport,
5 where they boarded a flight to Guam. Ren was arrested at the Guam International Airport, and
6 Tsang was later arrested in Honolulu. Defendant knew that Ren had paid money to the ring to
7 smuggle her into the United States.
8

9 (d) The defendant understands that notwithstanding any agreement of the parties, the
10 United States Probation Office will make an independent application of the Sentencing
11 Guidelines. The defendant acknowledges that should there be discrepancies in the final
12 sentencing guidelines range projected by his counsel or any other person, such discrepancies are
13 not a basis to withdraw his guilty plea.

14 7. The defendant understands that this plea agreement depends on the fullness and
15 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
16 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
17 material omissions or intentional misstatements or engage in criminal conduct after the entry of
18 his plea agreement and before sentencing, the government will be free from its obligations under
19 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
20 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
21 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
22 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
23 any and all information, in whatever form, that he has provided pursuant to this plea agreement
24 or otherwise; defendant shall not assert any claim under the United States Constitution, any
25 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
26 Evidence, or any other provision of law, to attempt to bar such use of the information.

27 8. Defendant understands that whether he has completely fulfilled all of the obligations
28 under this agreement shall be determined by the court in an appropriate proceeding at which any

1 disclosures and documents provided by defendant shall be admissible and at which the United
2 States shall be required to establish any breach by a preponderance of the evidence. In
3 determining whether there has been a breach, the parties agree that any polygraph results and the
4 polygrapher's conclusions and opinions shall be admissible.

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6 9. The defendant understands that his sentencing may be continued, at the sole discretion
7 of the United States, until after the indictment and trial of any associates involved. This will also
8 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
9 waives any right he may have to any speedy sentencing and hereby agrees to any continuance of
10 his sentencing date as it may become necessary.

11 10. In exchange for the government's concessions in this plea agreement, the defendant
12 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
13 the sentence imposed in this case. The defendant understands and agrees that the government
14 has bargained for a criminal conviction arising from his criminal conduct. If at any time
15 defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for whatever
16 reason, or is rendered invalid for any reason, or if any change of law renders the conduct for
17 which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
18 another charge encompassing the same or similar conduct. In such event, defendant waives any
19 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
20 constitutional restrictions as to the time of bringing such charges.

21 11. The defendant acknowledges that he has been advised of his rights as set forth below
22 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
23 had sufficient opportunity to reflect upon, and understands the following:

24 (a) The nature and elements of the charge and the mandatory minimum penalty provided
25 by law, if any, and the maximum possible penalty provided by law;

26 (b) His right to be represented by an attorney;

27 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the
28 right to be represented by counsel, the right to confront and cross-examine witnesses against him,

1 and the right not to be compelled to incriminate himself, that is, the right not to testify;

2
3 (d) That if he pleads guilty, there will not be a further trial of any kind on the charges to
4 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
5 up, the right to a trial;

6 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
7 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
8 does not accept the sentencing recommendations of the government or his counsel;

9 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
10 about the offenses to which he has pled, under oath, and that if he answers these questions under
11 oath, on the record, his answers may later be used against him in prosecution for perjury or false
12 statement if an answer is untrue;

13 (g) That he agrees that the plea agreement is voluntary and not a result of any force,
14 threats or promises apart from this plea agreement;

15 (h) The defendant is satisfied with the representation of his lawyer and feels that his
16 lawyer has done everything possible for his defense.

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1 (i) This plea agreement has been translated into defendant's native language and he fully
2 understands it.
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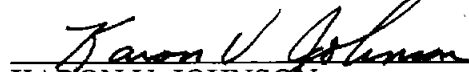
4 DATED: 10/21/05
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NORMAN HON SUEN CHAN
Defendant

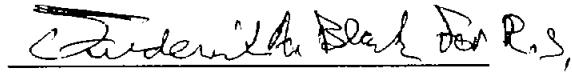
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7 DATED: 10/21/05
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G. PATRICK CIVILE
Attorney for Defendant

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12 DATED: 10/21/05
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By: 
KARON V. JOHNSON
Assistant U.S. Attorney

14
15 DATED: _____
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RUSSELL C. STODDARD
First Assistant U.S. Attorney